ROGER J. RASMUSSON

IBLA 77-425 Decided July 13, 1978

Appeal from decision of Administrative Law Judge Michael L. Morehouse affirming decision of Fillmore District Manager, Bureau of Land Management, Utah, reducing appellant's grazing privileges. Utah-3-75-3.

Affirmed.

1. Grazing Permits and Licenses: Base Property (Land): Ownership or Control -- Grazing Permits and Licenses: Cancellation or Reduction

   Provision of 43 CFR 4115.2-1(e)(8)(i) for termination of grazing permit upon permittee's loss of ownership or control of base property is mandatory.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Grazing Permits and Licenses: Generally

   Where BLM reduced grazer's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazer, equitable estoppel is not invoked against BLM since grazer by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

APPEARANCES: Willard R. Bishop, Esq., Morris and Bishop, Cedar City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Roger J. Rasmusson appeals from a May 17, 1977, decision of Administrative Law Judge Michael J. Morehouse affirming a May 16, 1975, decision of the Fillmore District Manager, Bureau of Land Management (BLM), Utah, reducing Rasmusson's grazing qualifications by 192 AUMs active use and 290 AUMs suspended nonuse.

[1] The regulations on grazing proceedings inside grazing districts provide that "[n]o adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this Title." 43 CFR 4.478(b). After a review of the evidence and the law in this matter, we conclude that in accordance with the scope of review given above, the Administrative Law Judge's decision should be affirmed, and we adopt his decision as part of this opinion. The facts of the case are cogently given in the Administrative Law Judge's decision and will not be reiterated here.

On appeal, Rasmusson has argued that:

> It is Appellant's position that when he discussed the original division of the property and grazing rights owned jointly by himself and Tebbs, he was told by the Fillmore District Area Manager that a transfer of a portion of Appellant's share of the divided grazing privileges would have to be transferred to other base property, even though Appellant had sufficient base property upon which those rights could rest. Appellant was told by the Fillmore District Area Manager that such a transfer was necessary in connection with the split of grazing rights between Appellant and Tebbs, as a technicality only, and that the grazing rights of Appellant would be transferred automatically back to Appellant's share of the original base property upon the expiration of one year. Appellant relied upon such statements by the Fillmore District Area Manager.

Generally, the courts have not applied estoppel to the United States, especially where public lands are involved. However, in an exception, United States v. Wharton, 514 F.2d 406, 412 (9th Cir. 1975), the court noted the four elements of estoppel 1/ :

1/ Other courts have phrased the elements of estoppel somewhat differently, but the differences are not substantive in nature, and for the purposes of this case, the statement of the estoppel test from Wharton is not inappropriate.

> (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Assuming arguendo that estoppel could be applicable, our focus here is upon the elements numbered 3 and 4 above. Detrimental reliance by the allegedly aggrieved claimant upon a Government official's representations is an essential consideration. E.g., Willadean Patton, 32 IBLA 350, 355-56 (1977); United States v. Tippetts, 29 IBLA 348, 354 (1977); Siesta Investments, Inc., 28 IBLA 118, 121-22 (1976). We must therefore examine the facts of this case to determine the nature of appellant's reliance on the statement appellant has attributed to Steve Wilkinson, who was Fillmore Area Manager for the BLM in 1965. 2/

[2] We refer to the testimony by Rasmusson quoted by the Administrative Law Judge in his opinion. 3/ Rasmusson conceded he understood that following the formal transfer, to which he acquiesced, of the qualifications from the initial base property to the base property near Ephraim, Utah, the BLM would not unilaterally retransfer the qualifications to the original base property. Rather, he indicated he assumed that the BLM officials would initiate the retransfer and "set up the papers." This sort of reliance is insufficient to justify equitable estoppel in the circumstances of his case. The proximate cause of the injury to Rasmusson was his selling the Ephraim base property before the grazing qualifications transferred to it from the former base property had been transferred back to the former base property. He understood that some action on his part would be necessary to effect the transfer back to the original base property, and he was aware that at no time prior to his selling the Ephraim base property in 1971 had he been called upon or had he made a request to execute the transfer back. Therefore, Rasmusson cannot credibly argue he reasonably believed when he surrendered control of the Ephraim base property that the BLM had already transferred the qualifications off the Ephraim property back to the original base lands. Equitable estoppel will not be invoked against the

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2/ At page 12 of the transcript for the hearing of July 14, 1976, Rasmusson testified that: "[Wilkinson] said, 'Let's just transfer this temporarily and we will shoot it right back to the other property and it will make it a lot faster,' * * *." Wilkinson testified that he did not recall a conversation to that effect. Transcript for hearing of January 19, 1977, pages 94-97.

3/ Page 4 of Administrative Law Judge's decision; Tr. 71-72 (Jan. 19, 1977).

BLM since Rasmusson by his own testimony showed that he was not ignorant of the true facts as to the lack of a transfer back, and that he did not in fact rely to his detriment on Wilkinson's representations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

May 17, 1977

ROGER J. RASMUSSON,	:	Utah 3 ! 75 ! 3
	:	
Appellant	:	Appeal from District Manager's
	:	Reduction Notice dated
v.	:	May 16, 1975, Fillmore
	:	District
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

DECISION

Appearances: Willard R. Bishop, Esq., Cedar City, Utah, for appellant;

Reid W. Nielson, Esq., Office of the Regional Solicitor, Department of the Interior, Salt Lake City, Utah, for respondent.

Before: Administrative Law Judge Morehouse.

This is a proceeding under the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315 et seq., and the grazing regulations in 43 CFR Subchapter D. The proceeding was initiated under 43 CFR 4.470 when Roger J. Rasmusson filed an appeal from the above reduction notice. A hearing was held on July 14, 1976, which was adjourned and later reconvened on January 19, 1977, at Fillmore, Utah. The parties were given thirty days from receipt of the transcript to submit briefs. The Government has submitted a brief. None has been received from appellant.

On April 2, 1975, the District Manager, Fillmore District Office, issued a show cause notice reducing appellant's grazing

license by 192 AUM's active use and 290 AUM's suspended nonuse due to appellant's loss of control of the base property to which these grazing privileges attached. Upon appellant's failure to sufficiently show cause why this action should not be taken, on May 16, 1975, the District Manager's decision issued to the same effect from which appellant took this appeal. The evidence is clear that prior to 1965 appellant and D. Ray Tebbs jointly owned property, the grazing privileges which attached to certain portions of that property, and they also ran a joint sheep operation. In 1965, the decision was made to divide the property and the grazing privileges so each could conduct a separate operation.

Pursuant to this decision, the division of the property was made, however, appellant's share of the property acquired through the division was insufficient on which to base his share of the divided grazing privileges and, therefore, certain of these grazing privileges (192 AUM's active use and 290 AUM's suspended nonuse with which we are here concerned) were transferred to other property owned by appellant in Ephraim, Utah.

In 1971 appellant sold the Ephraim property, however, there was no application made to transfer the grazing privileges that attached thereto and, in due course, when BLM discovered appellant's loss of ownership, the reduction notice and order to show cause issued.

It is appellant's position that when he discussed the original division of the property and grazing rights owned jointly by himself and Tebbs, he was told by an area manager in the Fillmore District that there was insufficient base property regarding appellant's share of the divided land on which to base appellant's share of the divided grazing privileges and, accordingly, the transfer of the excess privileges to the Ephraim property was suggested by BLM.

Pursuant to this, appellant made the proper application and the transfer took place. Appellant testified it was his understanding that this transfer was only to satisfy a technicality and these grazing privileges could revert back at any time to the original base property. He felt that when the Ephraim property was sold in 1971 these grazing privileges should have automatically reverted to other property owned by him, since he did have sufficient property on which to base these grazing privileges and he did not feel it was necessary to make application for this transfer. The effect of appellant's testimony was that BLM officers were out in the field to help the individual and somehow these privileges should have been transferred back automatically.

The BLM area manager testified that the only procedure under their rules and regulations to transfer grazing privileges requires that an application be filed clearly setting out the various properties and grazing privileges involved. He stated he had no recollection of any discussion with appellant wherein it was said that grazing rights could be temporarily transferred to the Ephraim property and then automatically revert back to other property owned by appellant.

The regulations, 43 CFR 4115.2-1(e)(8)(i), provide as follows:

> (e) Terms and conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:
>
> * * *
>
> (8) If a licensee or permittee loses ownership or control of:
>
> (i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine . . . .

The above language regarding termination of the permit upon loss of control or ownership of the base property is mandatory. The District Manager is given discretion to determine only whether the termination will take place at the end of the grazing season or grazing year. In either event, the permit must be cancelled or reduced to the extent of the base property loss. See, generally, James G. Brown, A-27635, 65 I.D. 394 (1958); and Allen G. Haigh, 18 IBLA 242 (1974).

Also, it should be pointed out that although appellant felt there should have been some kind of automatic retransfer of

these grazing rights upon the sale of the Ephraim property, it is clear from the following colloquy that he had some understanding of BLM procedures:

> Q Now, I'm just asking you who was to initiate that transfer back?
>
> A So I assumed the BLM official would help with that.
>
> Q Well, now who was to initiate that?
>
> A At that time I wasn't sure.
>
> Q Would BLM be authorized to transfer this without your approval?
>
> A No, but I felt that if they were trying to help you, they would set up the papers.
>
> Q Now, answer my question. Would they be authorized without your approval?
>
> A No, but with my approval they would.
>
> Q Did you ever ask them to transfer these privileges back?
>
> A Not that I recall. (Tr. 72)

It must, therefore, be concluded that the District Manager's decision of May 16, 1975, reducing appellant's grazing privileges by 192 AUM's active use and 290 AUM's suspended nonuse was proper and must be affirmed.

Michael L. Morehouse
Administrative Law Judge

APPEAL INFORMATION

Appellant, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals.

The appeal must be in strict compliance with the regulations in 43 CFR Part 4. (See enclosed information pertaining to appeals procedures.)

If an appeal is taken the adverse party, the Bureau of Land Management, can be served by service upon the Office of the Regional Solicitor at the address listed below.

Enclosure: Information Pertaining to Appeals Procedures

Distribution:
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Willard R. Bishop, Esq.
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Standard grazing distribution